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CITATIONS

In the Supreme Court of the United States

October Term, 1947

No. 637

Mercantile-Commerce Bank and Trust Company and John Edwin George, Executors of the Estate of P. D. George, Deceased, petitioners

v.

Commissioner of Internal Revenue

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The memorandum opinion of the Tax Court (R. 29-34) is not reported. The opinion of the Circuit Court of Appeals (R. 46-52) is reported in 165 F. 2d 307.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 15, 1948 (R. 52). The petition for a writ of certiorari was filed March 2, 1948. The jurisdiction of this Court is in-

voked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

Whether the court below erred in affirming the Tax Court's decision that the income of a trust fund, of which taxpayer concedely was the substantial owner, was taxable to taxpayer under Section 22 (a) of the Internal Revenue Code.

STATUTES AND REGULATIONS INVOLVED

These appear in the Appendix, *infra*, pp. 14–20.

STATEMENT

This case involves income tax liability for the years 1942 and 1943.[1] In 1939 taxpayer transferred stock of P. D. George Company to himself and two others in trust for his seven sons. Under the terms of the trust instrument taxpayer reserved, among other powers, the right to change the beneficiaries of the corpus and income. The Commissioner determined that the trust income for 1939 was taxable to taxpayer by virtue of the powers retained by him. The Tax Court, in a memorandum opinion entered July 16, 1943, sustained the Commissioner's determination, holding that taxpayer was taxable on the

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[1] Taxpayer died in 1945 and is represented by his executors (R. 29). Although a deficiency is asserted only for the year 1943, taxpayer's income tax liability for 1942 must be taken into account as provided in Section 6 of the Current Tax Payment Act of 1943, c. 120, 57 Stat. 126.

trust income under Section 22 (a) of the Internal Revenue Code, and *Helvering* v. *Clifford*, 309 U. S. 331. Upon appeal, the Circuit Court of Appeals affirmed the Tax Court's decision (143 F. 2d 837), and this Court denied certiorari (323 U. S. 778) (R. 30).

Prior to 1942 taxpayer caused the stock held in trust for six of his seven sons to be distributed to them. Thereafter the trust estate consisted of 100 shares of stock held for the seventh son. The trust income for 1942 and 1943 was distributed to this son, who reported the income and paid the tax (R. 30). The Commissioner included the 1942 and 1943 trust income in taxpayer's gross income as defined in Code Section 22 (a), resulting in the income tax deficiency here in controversy (R. 31). Taxpayer contested the Commissioner's determination on the theory that the *Clifford* doctrine had been nullified by the amendments to Code Sections 22 (b) (3) and 162, enacted by Section 111 of the Revenue Act of 1942, c. 619, 56 Stat. 798. The Tax Court rejected this contention and sustained the Commissioner (R. 31–34). The Circuit Court of Appeals affirmed (R. 47–52).

ARGUMENT

1. The court below correctly affirmed the Tax Court's decision, sustaining the Commissioner's determination, that taxpayer was taxable on the trust income under Section 22 (a) and *Helvering*

v. *Clifford,* 309 U. S. 331. It is stipulated (R. 17), and the Tax Court found (R. 30), that taxpayer reserved the right to change the beneficiary of both the income-producing corpus and the income. In harmony with the principles enunciated by this Court in the *Clifford* case it has repeatedly been held that a settlor who retains such a power remains the substantial owner of the trust property for purposes of Section 22 (a).[2] The identical question here presented, involving the same taxpayer and the same trust instrument but a different taxable year, was decided adversely to taxpayer by the court below in *George* v. *Commissioner,* 143 F. 2d 837, and this Court denied certiorari, 323 U. S. 778 (R. 30). Nothing has occurred since denial of certiorari in that case which calls for review.

Taxpayer requests further review on the theory (Br. 12–29) that Code Sections 22 (b) (3) and

[2] See, *e. g.*, *Stockstrom* v. *Commissioner*, 148 F. 2d 491 (C. C. A. 8th), certiorari denied, 326 U. S. 719; *Brown* v. *Commissioner*, 131 F. 2d 640 (C. C. A. 3d), certiorari denied, 318 U. S. 767; *Edison* v. *Commissioner*, 148 F. 2d 810 (C. C. A. 8th), certiorari denied, 326 U. S. 721; *Commissioner* v. *Buck*, 120 F. 2d 775 (C. C. A. 2d); *Hyman* v. *Nunan*, 143 F. 2d 425 (C. C. A. 2d); *Miller* v. *Commissioner*, 147 F. 2d 189 (C. C. A. 6th); *Steckel* v. *Commissioner*, 154 F. 2d 4 (C. C. A. 6th); *Helvering* v. *Elias*, 122 F. 2d 171 (C. C. A. 2d), certiorari denied, 314 U. S. 692. In the case of a family trust "the possession of such a power is conclusive" in marking the grantor the substantial owner of the trust property (*Hyman* v. *Nunan*, *supra*, p. 428), for it is "chief" among the "satisfactions which are of economic worth" (*Commissioner* v. *Buck*, *supra*, p. 777).

162, as amended by Section 111 of the Revenue Act of 1942 (Appendix, *infra*), are designed to repudiate the fundamental principle, exemplified in the case of gifts in trust by the *Clifford* case, that command over property or its income denotes the real owner for purposes of Section 22 (a). The theory was properly rejected by the courts below (R. 31–34, 47–52). The basic fallacy in taxpayer's argument is that it isolates Section 22 (b) (3) from its statutory context and treats that exemption section—indeed, a single clause in it—as though it were a taxing statute unto itself.

Sections 22 (b) (3) and 162 (as well as Sections 22 (a), 161, 166 and 167 (Appendix, *infra*)) are functionally related; in fact, both were amended by the self-same section of the 1942 Act upon which taxpayer relies.[3] When the 1942 amendments are examined in the light of the statutory mosaic upon which they were superimposed, their legislative history, and the administrative interpretation, it is apparent that they were no more designed to relieve from tax a donor of income from property (or of income-producing property of which he remains the substantial owner) than a donor of income de-

[3] Paragraph (a) of Section 111 of the Revenue Act of 1942 amended Code Section 22 (b) (3); paragraph (b) amended Code Section 162 (b); and paragraph (c) added Code Section 162 (d). By paragraph (e) the amendments were made applicable to taxable years beginning after December 31, 1941.

rived from services. The amendments were addressed to the problem of who, as between the fiduciaries and beneficiaries of a trust, is taxable on the trust income; not who, as between the grantor and the fiduciary-beneficiaries, is taxable. They presuppose a real gift in trust, i. e., one where Sections 161 and 162 come into play; not an abortive one where (as here) the grantor retains substantial ownership of the trust property and hence remains taxable on the trust income under Section 22 (a), 166, or 167. And far from limiting what must be included in the grantor's gross income under the latter sections, they limit what may be excluded from the beneficiary's gross income under Sections 22 (b) (3) and 162.[4] A grantor who continues to enjoy

[4] Section 161 provides that taxes applicable to individuals apply to estates and trusts, and that the tax is to be paid by the fiduciary. Section 162 (b) provides that the net income of the estate or trust is to be computed in the same manner as in the case of an individual, except that an "additional deduction" is allowed to the fiduciary for the "amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary" to the beneficiaries, provided the amount so deducted is reported by the beneficiaries. Section 22 (b) (3), prior to its amendment by the 1942 Act, provided for the exclusion from gross income (as defined in Section 22 (a)) of "The value of property acquired by gift, bequest, devise, or inheritance (but the income from such property shall be included in gross income)." Where a completed gift of income-producing property was made *directly to the donee*, no difficulty in the application of this provision arose; the donee could exclude from his gross income the value of the "property," but not the future "income" from it. Where the gift was made *in trust*, however, there

substantial ownership of the trust fund does not insulate himself from tax liability under Section 22 (a) by simply pointing to other provisions of the taxing statute which would have operated to shift the tax to the fiduciary-beneficiaries *if*

resulted a severance of the "property" and the "income" as between the fiduciary and the beneficiary. In reporting the trust income pursuant to Section 162 the *fiduciary* could of course exclude the value of the corpus and also deduct the amounts of income distributed to the beneficiaries; but the question arose whether a life *beneficiary* of a trust could treat the amounts received from the trustee as exempt "property." This question was resolved in *Irwin* v. *Gavit*, 268 U. S. 161, which construed the predecessor of Section 22 (b) (3) as not exempting the beneficiary from tax. However, the exemption provision was also later construed as excluding from a trust beneficiary's gross income so-called annuity payments, notwithstanding that such payments were made in whole or in part out of the trust income. *Burnet* v. *Whitehouse*, 283 U. S. 148. Accordingly, it was held that the fiduciary could not deduct the amount of trust income distributed to the annuitant in computing the net income of the trust under Section 162, with the consequence that the other income beneficiaries were compelled to bear the burden of the tax on such income. *Helvering* v. *Pardee*, 290 U. S. 365. Section 111 of the Revenue Act of 1942 corrected this situation by adding paragraph (d) to Section 162, and by also correlatively amending Section 22 (b) (3), so as to require annuitants to bear the tax allocable to amounts received by them from the trust income. At the same time, the construction placed upon Section 22 (b) (3) in *Irwin* v. *Gavit*, *supra*, was written into that section; this was done by insertion of the phrase "gift * * * of income from property" as an *exception* to the exemption accorded to donees by that section. It is this phrase, referred to in the accompanying committee reports (R. 32–33) as merely a confirmation of the "existing law" as laid down in *Irwin* v. *Gavit*, which taxpayer claims was designed to vitiate the *Clifford* doctrine.

he had made a real gift in trust. "These provisions have appropriate reference to cases where the income of the trust is no longer to be regarded as that of the settlor." *Douglas* v. *Willcuts,* 296 U. S. 1, 10. Retention of substantial ownership transcends every term of the trust instrument and endows the grantor with that command over the trust income which stamps him the true owner for tax purposes. To subscribe to the interpretation which taxpayer places upon the 1942 amendments of Sections 22 (b) (3) and 162 would produce the anomaly that Sections 166 and 167 (requiring taxability of trust income to a grantor who retains substantial ownership through a power to retake either the trust corpus or income) are no longer in force though never repealed. What is more, it would require taxation of income to him who collects it, rather than to him who has the power to dispose of it, and thus sanction concepts of tax liability which are the antithesis of those to which the courts have adhered from the beginning of our revenue laws. See *Corliss* v. *Bowers,* 281 U. S. 376; *Lucas* v. *Earl,* 281 U. S. 111; *Helvering* v. *Clifford, supra*; *Helvering* v. *Horst,* 311 U. S. 112; *Helvering* v. *Eubank,* 311 U. S. 122; *Harrison* v. *Schaffner,* 312 U. S. 579; *Commissioner* v. *Tower,* 327 U. S. 280. As the court below observed (R. 50), "If Congress intended a result so revolutionary in character, we think it would doubtless

have used language more explicit than that of the amendment."

That Congress had no such purpose in mind is plain from the Committee Reports accompanying the 1942 Act,[6] the material portions of which are quoted in the opinions below (R. 32–34, 51–52). The reports unequivocably state that the amendments were not meant to alter existing rules respecting the taxability of trust income or other assigned income under Section 22 (a). Even if the Committee Reports had not contained such positive statement of intent, the applicable Treasury Regulations would foreclose the interpretation advanced by taxpayer. Section 29.22 (b) (3)–1 of Regulations 111 (Appendix, *infra*) expressly provides that "Section 22 (b) (3) is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of earnings or other income under section 22 (a), section 166, or section 167". This Regulation, harmonizing with the purposes expressed in the Committee Reports, cannot be said to be so unreasonable an interpretation of Section 22 (b) (3), as amended, as to be unauthorized. Cf. *Fawcus Machine Co.* v. *United States,* 282 U. S. 375; *Helvering* v. *Wilshire Oil Co.,* 308 U. S. 90. Indeed, the administrative interpretation must be deemed to have received

[6] H. Rep. No. 2333, 77th Cong., 2d Sess., p. 67 (1942–2 Cum. Bull. 372, 424); S. Rep. No. 1631, 77th Cong., 2d Sess., p. 70 (1942–2 Cum. Bull. 504, 558).

implied legislative approval, for although the Code has several times been amended since this Regulation was promulgated in 1943, no further changes in Section 22 (b) (3) have been enacted. *Helvering* v. *Winmill*, 305 U. S. 79; *Boehm* v. *Commissioner*, 326 U. S. 287, rehearing denied, 326 U. S. 811; *Commissioner* v. *Flowers*, 326 U. S. 465. The *Clifford* doctrine, far from having lost its vigor, was recently reaffirmed by this Court in *Commissioner* v. *Tower*, *supra*, and is daily being applied by the Treasury Department and the courts. It has also been implemented by T. D. 5488, 1946–1 Cum. Bull. 19 (amended by T. D. 5567, 1947–14 Int. Rev. Bull. 2), which added Section 29.22 (a)–21 to Regulations 111 as a guide for applying the *Clifford* rule in taxable years beginning after December 31, 1945.

2. Taxpayer does not and cannot point to any case with which the decision below is in conflict. His assertion (Br. 21–24) of conflict with cases to the effect that legislative intent is to be found exclusively in the words of a statute rests upon the unwarranted assumption that the clause of Section 22 (b) (3) upon which he relies must be divorced from the rest of the statute. It is the duty of the courts to ascertain the legislative intent "not by taking the word or clause in question from its setting and viewing it apart, but by considering it in connection with the context, the general purposes of the statute in which it is found, the occasion and circumstances of its use,

and other appropriate tests for the ascertainment of the legislative will." *Helvering* v. *Stockholms &c. Bank*, 293 U. S. 84, 93–94. See also *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 543–544; *Helvering* v. *Morgan's Inc.*, 293 U. S. 121, 126; *Harrison* v. *Northern Trust Co.*, 317 U. S. 476, 479; *Commissioner* v. *Flowers*, *supra*. In tearing a single phrase from the fabric of the statute, and insisting that the courts below were obliged to shut their eyes to its legislative history and every other aid to statutory construction,[6] taxpayer is heedless to the admonition of this Court (*United States* v. *Amer. Trucking Ass'ns*, *supra*, p. 544) that—

> Emphasis should be laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."

In any event, even assuming that the courts below were precluded from looking beyond the particular clause of Section 22 (b) (3) relied upon by taxpayer, and further assuming that the

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[6] Taxpayer's contention (Br. 21–22) that the portion of Section 22 (b) (3) relied upon by him is unambiguous and not open to construction is inconsistent with his labored attempt (Br. 15–20) to find extrinsic support for his own construction.

clause is susceptible of but one literal interpretation,[7] that still would not prevent resort to its legislative history, for (*Harrison* v. *Northern Trust Co., supra*, p. 479)—

> words are inexact tools at best, and for that reason there is wisely no rule of law forbidding resort to explanatory legislative history no matter how "clear the words may appear on 'superficial examination.' "

See also *Bazley* v. *Commissioner*, 331 U. S. 737, rehearing denied October 13, 1947; *United States* v. *Dickerson*, 310 U. S. 554, 562; *United States* v. *Amer. Trucking Assn.'s, supra*, pp. 543, 544; *Helvering* v. *Stockholms &c. Bank, supra*, p. 94; *Helvering* v. *Morgan's, Inc., supra*, p. 126.

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[7] The phrase "gift * * * of income from property" as used in Section 22 (b) (3) may hardly be deemed to be so clear on its face as to leave no room for construction. This Court recently had occasion to construe the term "income" (*Commissioner* v. *Wilcox*, 327 U. S. 404), and the term "property" (*Crane* v. *Commissioner*, 331 U. S. 1). See also *Irwin* v. *Gavit, supra; Douglas* v. *Willcuts, supra; Hort* v. *Commissioner*, 313 U. S. 28; *Helvering* v. *Wilshire Oil Co., supra*. In the latter case the Court stated (p. 102): "The ambiguous phrase 'net income * * * from the property' was susceptible of various meanings and hence administrative interpretation of it was peculiarly appropriate."

CONCLUSION

The decision below is correct. There is no conflict, and no occasion for further review. The petition should therefore be denied.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

THERON LAMAR CAUDLE,
Assistant Attorney General.

SEWALL KEY,
GEORGE A. STINSON,
HARRY BAUM,
Special Assistants to the Attorney General.

MARCH 1948.

APPENDIX

Internal Revenue Code:

SEC. 21. NET INCOME.

(a) *Definition.*—"Net income" means the gross income computed under section 22, less the deductions allowed by section 23.

(26 U. S. C. 1940 ed., Sec. 21.)

SEC. 22. GROSS INCOME.

(a) *General Definition.*—"Gross income" includes gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid, or from professions, vocations, trades, businesses, commerce, or sales, or dealings in property, whether real or personal, growing out of the ownership or use of or interest in such property; also from interest, rent, dividends, securities, or the transaction of any business carried on for gain or profit, or gains or profits and income derived from any source whatever. * * *

(b) *Exclusions from Gross Income.*—The following items shall not be included in gross income and shall be exempt from taxation under this chapter:

* * * * *

(3) [as amended by Section 111 (a) of the Revenue Act of 1942, c. 619, 56 Stat. 798] *Gifts, bequests, devises, and inheritances.*—The value of property acquired by gift, bequest, devise, or inheritance. There shall not be excluded from gross income under this paragraph, the income from such

property, or, in case the gift, bequest, devise, or inheritance is of income from property, the amount of such income. For the purposes of this paragraph, if, under the terms of the gift, bequest, devise, or inheritance, payment, crediting, or distribution thereof is to be made at intervals, to the extent that it is paid or credited or to be distributed out of income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property; * * *

(26 U. S. C. 1940 ed., Sec. 22.)

Sec. 161. Imposition of tax.

(a) *Application of Tax.*—The taxes imposed by this chapter upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

(1) Income accumulated in trust for the benefit of unborn or unascertained persons or persons with contingent interests, and income accumulated or held for future distribution under the terms of the will or trust;

(2) Income which is to be distributed currently by the fiduciary to the beneficiaries, and income collected by a guardian of an infant which is to be held or distributed as the court may direct;

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

(4) Income which, in the discretion of the fiduciary, may be either distributed to the beneficiaries or accumulated.

(b) *Computation and Payment.*—The tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary, except as provided in sec-

tion 166 (relating to revocable trusts) and section 167 (relating to income for benefit of the grantor).

* * * * *

(26 U. S. C. 1940 ed., Sec. 161.)

SEC. 162. NET INCOME.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

* * * * *

(b) [as amended by Section 111 (b) of the Revenue Act of 1942, *supra*] There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the legatees, heirs, or beneficiaries, but the amount so allowed as a deduction shall be included in computing the net income of the legatees, heirs, or beneficiaries whether distributed to them or not. As used in this subsection, "income which is to be distributed currently" includes income for the taxable year of the estate or trust which, within the taxable year, becomes payable to the legatee, heir, or beneficiary. * * *

* * * * *

(d) [added by Section 111 (c) of the Revenue Act of 1942, *supra*] *Rules for Application of Subsections* (*b*) *and* (*c*).—*For the purposes of subsections* (*b*) *and* (*c*).—

(1) *Amounts distributable out of income or corpus.*—In cases where the amount paid, credited, or to be distributed can be paid, credited, or distributed out of other than income, the amount paid,

credited, or to be distributed (except under a gift, bequest, devise, or inheritance not to be paid, credited, or distributed at intervals) during the taxable year of the estate or trust shall be considered as income of the estate or trust which is paid, credited, or to be distributed if the aggregate of such amounts so paid, credited, or to be distributed does not exceed the distributable income of the estate or trust for its taxable year. If the aggregate of such amounts so paid, credited, or to be distributed during the taxable year of the estate or trust in such cases exceeds the distributable income of the estate or trust for its taxable year, the amount so paid, credited, or to be distributed to any legatee, heir, or beneficiary shall be considered income of the estate or trust for its taxable year which is paid, credited, or to be distributed in an amount which bears the same ratio to the amount of such distributable income as the amount so paid, credited, or to be distributed to the legatee, heir, or beneficiary bears to the aggregate of such amounts so paid, credited, or to be distributed to legatees, heirs, and beneficiaries for the taxable year of the estate or trust. For the purposes of this paragraph "distributable income" means either (A) the net income of the estate or trust computed with the deductions allowed under subsections (b) and (c) in cases to which this paragraph does not apply, or (B) the income of the estate or trust minus the deductions provided in subsections (b) and (c) in cases to which this paragraph does not apply, whichever is the greater.

In computing such distributable income the deductions under subsections (b) and

(c) shall be determined without the application of paragraph (2).

(26 U. S. C. 1940 ed., Sec. 162.)

SEC. 166. REVOCABLE TRUSTS.

Where at any time the power to revest in the grantor title to any part of the corpus of the trust is vested—

(1) in the grantor, either alone or in conjunction with any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom, or

(2) in any person not having a substantial adverse interest in the disposition of such part of the corpus or the income therefrom,

then the income of such part of the trust shall be included in computing the net income of the grantor.

(26 U. S. C. 1940 ed., Sec. 166.)

SEC. 167. INCOME FOR BENEFIT OF GRANTOR.

(a) Where any part of the income of a trust—

(1) is, or in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income may be, held or accumulated for future distribution to the grantor; or

(2) may, in the discretion of the grantor or of any person not having a substantial adverse interest in the disposition of such part of the income, be distributed to the grantor; or

*   *   *   *   *

then such part of the income of the trust shall be included in computing the net income of the grantor.

Treasury Regulations 111, promulgated under the Internal Revenue Code:

SEC. 29.22 (a)-1. *What Included in Gross Income.*—Gross income includes in general compensation for personal and professional services, business income, profits from sales of and dealings in property, interest, rent, dividends, and gains, profits, and income derived from any source whatever, unless exempt from tax by law. (See sections 22 (b) and 116.) In general, income is the gain derived from capital, from labor, or from both combined, * * *

SEC. 29.22 (b)-1. *Exemptions.—Exclusions from Gross Income.*—Certain items of income specified in section 22 (b) are exempt from tax and may be excluded from gross income. These items, however, are exempt only to the extent and in the amount specified. * * *

SEC. 29.22 (b) (3)-1. *Gifts and Bequests.*—Property received as a gift, or received under a will or under statutes of descent and distribution, is not includible in gross income, although the income from such property is includible in gross income. If the gift, bequest, devise, or inheritance is of income from property, it is not to be excluded from gross income. An amount of principal paid under a marriage settlement is a gift. As to alimony or an allowance paid upon divorce or legal separation, see section 29.22 (k)-1.

Section 22 (b) (3) provides a special rule for the treatment of gifts, bequests, devises, or inheritances which by their terms are to be paid, credited, or to be distributed at intervals. To the extent any such gift, bequest, devise, or inheritance is paid, credited, or to be distributed out of

income from property, it shall be considered a gift, bequest, devise, or inheritance of income from property. Section 22 (b) (3) is designed to provide the same treatment for amounts of income from property, which income is paid, credited, or to be distributed under a gift or bequest, whether the gift or bequest is in terms of a right to payments at intervals (regardless of income) or is in terms of a right to income. To the extent the amounts in either case are paid, credited, or to be distributed at intervals out of income they are not to be excluded under section 22 (b) (3) from the taxpayer's gross income. As to the extent such amounts are paid, credited, or to be distributed out of income from property in cases in which the payment, crediting, or distribution thereof is to be made by an estate or trust, see section 162 and the regulations thereunder. * * *

Section 22 (b) (3) is not intended to tax a donee upon the same income which is taxed to the grantor of a trust or assignor of earnings or other income under section 22 (a), section 166, or section 167.

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